

*Labor Standards  
Information Series*

# **WISCONSIN'S PREVAILING WAGE RATE LAWS**

## **2006**

State of Wisconsin  
Department of Workforce Development  
Equal Rights Division

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Additional copies of this booklet are available from:

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Please contact the Labor Standards Bureau if you have a question that was not addressed or if you desire a more detailed explanation of a specific question.

The Department of Workforce Development is an equal opportunity service provider. If you need assistance to access services or material in an alternate format, please contact us. Deaf, hearing, or speech-impaired callers may reach us in Madison at (608) 264-8752 or in Milwaukee at (414) 227-4081.

More information regarding Wisconsin's prevailing wage rate laws is available at the following web site:

[http://www.dwd.state.wi.us/er/prevailing\\_wage\\_rate/default.htm](http://www.dwd.state.wi.us/er/prevailing_wage_rate/default.htm)

The Labor Standards Bureau of the Department of Workforce Development, Equal Rights Division, has prepared this pamphlet to provide you with answers about Wisconsin's prevailing wage rate laws.

The answers provided are applicable to most, but not all, situations because a variety of facts must often be considered in order to make a proper interpretation of these laws. The information in this pamphlet reflects the laws, administrative rules, and judicial or administrative interpretations in effect at the time of printing. These factors may change from time to time. The Labor Standards Bureau will update this pamphlet as time and budget constraints permit.

The information in this pamphlet may not reflect the policies and procedures utilized by the Department of Transportation to carry out its responsibilities pursuant to s. 103.50, Wisconsin Statutes. The Department of Transportation is the only state agency that can enforce the payment of prevailing wage rates on state highway and bridge projects. If you have questions or wish to file a complaint on a state highway or bridge project, you should contact the appropriate Labor Compliance Coordinator at the Department of Transportation.

### **What is Wisconsin's prevailing wage rate law?**

Wisconsin actually has three (3) separate prevailing wage rate laws. Each law covers a different type of public works project. Section 66.0903, Wisconsin Statutes covers projects bid or negotiated by a local governmental unit. Section 103.49, Wisconsin Statutes covers projects bid by a state agency, except state highway and bridge projects. Section 103.50, Wisconsin Statutes covers state highway and bridge projects bid by the Department of Transportation. Administrative Code, DWD 290 outlines the administrative rules for prevailing wage.

### **When were these laws enacted?**

Section 66.293, Wisconsin Statutes (Renumbered 66.0903 in January 2001) was enacted in 1933. Sections 103.49 and 103.50, Wisconsin Statutes were enacted in 1931. Extensive revisions to all of these laws were enacted in 1996.

### **What is the purpose of these laws?**

These laws were enacted to discourage the awarding of public works contracts to employers who frequently underbid local employers by paying their workers substantially less than normally received by workers in an area. Governmental agencies were precluded from awarding contracts exclusively to local employers because various bid laws required that most public works contracts be awarded to the lowest responsible bidder. As wages were the most controllable factor in the bidding process, workers were put in the precarious position of having their wages manipulated by their employer. This problem created instability in the local construction industry. Prevailing wage rate laws were enacted to provide a partial solution to this problem.

### **How did these laws resolve this problem?**

These laws mandated that most workers employed on public works projects must receive wages which are representative of the wages normally paid to workers on similar private projects in an area. Employers were required to base their bids on prudent planning, good management and supervision and the skill and efficiency of their workers and not solely on the wages paid to their workers.

## **Who administers these laws?**

The Department of Workforce Development is the state agency that is primarily responsible for administering these laws.

Assistance is received from the Department of Justice, as well as from local governmental units. The Department of Transportation has the authority to enforce the payment of the prevailing wage rates on all state highway and bridge projects.

## **Do these laws cover all public works projects?**

No. Most projects must exceed a specified dollar threshold to be covered by these laws. Thresholds are established for single trade and multiple-trade projects. As of January 1, 2006 the threshold for a single trade project is \$43,000 and the threshold for a multiple-trade project is \$209,000. These laws do not cover projects below these thresholds. A “single trade project” is defined as one in which a single trade (such as a carpenter, glazier, electrician, etc.) accounts for 85% or more of the total labor cost of such project. A “multiple-trade project” is defined as one in which no single trade accounts for more than 85% of the total labor cost of such project. State highway and bridge projects have no threshold and are all covered by the law. Most work performed on the site of a project subject to any of these laws must normally be paid for at the proper prevailing wage rate.

## **When my contract is under the threshold, do I need to pay prevailing wage rates?**

Contracts are different from projects. A project consists of all contracts and subcontracts necessary to be completed for a project to meet its intended use. Monetary thresholds apply to projects. Contracts are usually only a portion of a project.

### **Are the thresholds ever adjusted?**

Yes. The thresholds are adjusted every year. The adjustments usually take place in the month of January. The adjustment must be made in proportion to the change in construction costs, as measured by the construction cost index as published in Engineering News-Record.

### **What is the definition of the term “project” under these laws?**

Generally speaking, the term “project” means all labor, material, furnishings or other things of value required to be supplied by a bidder or bidders to construct a project for its intended use, excluding the cost of land, architectural and engineering fees and planning and research costs.

A single project may not be divided into two (2) or more projects for the purpose of avoiding these laws. All contracts or subcontracts awarded to complete a specific project are considered as a part of that project if they are closely related in purpose, time, and place. The estimated cost of a project must be fairly calculated using the most current prevailing wage rates available from the department. Similar or related work performed at the same time may be considered as separate projects only if each portion of work has a separate budget, is advertised, bid or negotiated and awarded separately and the completion of one portion of work is not dependent on another portion of work. It is the responsibility of each state agency or local governmental unit to justify the separation of projects. All service, maintenance and warranty work is excluded from coverage under these laws. Supply and installation contracts may be excluded under certain circumstances.

**Is a prevailing wage rate determination required if a project is bid without obtaining a prevailing wage rate determination because the total estimated cost was below the minimum threshold, but the low bid was above the minimum threshold?**

It depends. Assuming that the estimate was made in good faith, if the low bid exceeds the estimate by less than 12%, a prevailing wage rate determination is not required. If however, the low bid exceeds the estimate by more than 12%, a prevailing wage rate determination is required, except under highly unusual circumstances.

**Must a prevailing wage rate determination be used if the low bid is below the minimum threshold?**

Yes. If a prevailing wage rate determination is issued it is in effect. The determination remains in effect even if the low bid is below the minimum threshold.

**Do these laws ever cover private projects?**

These laws generally apply only when a state agency or local governmental unit solicits bids or negotiates a contract for a public works project. A “turnkey” project may be subject to these laws depending on the ultimate use of the project.

**How do I apply for a prevailing wage rate determination?**

For all projects, except state highway and bridge projects, you must apply to the Department of Workforce Development to obtain a prevailing wage rate determination. The department requires that all applications be made on form ERD-5719, which is available at no charge from the department. The prevailing wage rates for all state highway and bridge projects must be obtained from the Wisconsin DOT.



### **Who should complete and submit the application?**

The application may be completed and submitted by an authorized official of a state agency or local governmental unit, or by an authorized representative, such as an architect, professional engineer, or construction manager.

### **When should the application be submitted?**

The application should be submitted 50 to 60 days prior to soliciting bids or negotiating a contract for a project.

### **How long does it take the department to issue a prevailing wage rate determination?**

The department has 30 days from the date it receives an application to issue the prevailing wage rate determination. Most prevailing wage rate determinations are issued in less than 30 days, but it is best to anticipate that it will take the department the full 30 days to issue the determination.

### **If a project is covered by a prevailing wage rate determination issued pursuant to the federal Davis-Bacon Act, is a prevailing wage rate determination also required pursuant to Wisconsin's prevailing wage rate laws?**

Yes, as long as the project meets all of the requirements previously mentioned.

### **Do these laws cover public projects that are privately funded?**

Regardless of where the money to fund the project comes from, these laws are applicable when a state agency or local governmental unit solicits bids or negotiates a contract.

**Is any local governmental unit exempt from applying for a prevailing wage rate determination?**

Yes. Any local governmental unit that has adopted an ordinance or other enactment which sets forth standards as high as or higher than those prescribed in s. 66.0903, Wisconsin Statutes, may be exempted from applying to the department for a prevailing wage rate determination. The local governmental unit is not exempt from the law but is merely exempt from applying to the department for prevailing wage rate determinations on a project-by-project basis. The department routinely exempts about a dozen local governmental units. Every local governmental unit that desires to be “exempt” must have a methodology in place to enforce the payment of the prevailing wage rates before an exemption will be granted.

**What can be done if a state agency or local governmental unit fails to request a prevailing wage rate determination before it solicits bids or negotiates a contract?**

Sections 66.0903 and 103.49, Wisconsin Statutes provide that the department can issue a prevailing wage rate determination after a contract has been awarded or negotiated. A prevailing wage rate determination issued after the fact is just as binding on all parties as if it had been issued before the awarding or negotiating of a contract.

**Can an employer recover extra compensation if a prevailing wage rate determination was issued after a contract was awarded or negotiated?**

Yes. A state agency or local governmental unit is required to either terminate the contract and re-solicit bids using the prevailing wage rate determination or reimburse the affected employer for any valid increased costs through a change order or other appropriate procurement procedure.

## **How does the department determine prevailing wage rates?**

The department conducts an annual survey regarding the wages and fringe benefits paid to and hours worked by workers employed in the construction and related industries. Only employers in construction and related industries are allowed to participate in the annual survey.

## **Is completion of the annual survey mandatory?**

Yes, except if the business did not perform any construction or related work during the survey period or had no workers that performed construction work during the survey period. The annual survey is the sole basis for determining prevailing wage rates.

## **What does the term “prevailing wage rate” mean?**

The term “prevailing wage rate” means the hourly basic rate of pay, plus the hourly contribution for health insurance benefits, vacation benefits, pension benefits and any other bona fide economic benefit, paid directly or indirectly for a majority of the hours worked in a trade or occupation on projects in an area. If there is no rate at which a majority of the hours worked in a trade or occupation on projects in an area is paid, then the prevailing wage rate shall be the average hourly basic rate of pay, weighted by the number of hours worked, plus the average hourly contribution, weighted by the number of hours worked, for health insurance benefits, vacation benefits, pension benefits and any other bona fide economic benefit, paid directly or indirectly for all hours worked at the hourly basic rate of pay of the highest-paid 51% of hours worked in that trade or occupation.

### **What does the term “area” mean?**

The term “area” means the county in which a proposed project is located. If the department determines that there is insufficient wage data in that county, “area” means those counties that are contiguous to that county. If the department determines that there is insufficient wage data in those counties, “area” means those counties that are contiguous to those counties. If the department determines that there is insufficient wage data in those counties, “area” means the entire state. If the department is requested to conduct an administrative review, “area” means the city, village, or town in which a proposed project is located.

### **What does the term “insufficient wage data” mean?**

The term “insufficient wage data” means less than 500 hours of work performed by a particular trade or occupation on projects that are similar to a proposed project.

### **Can different types of projects have different prevailing wage rates for the same trade or occupation?**

Yes. Prevailing wage rates are determined for several different types of projects including building and heavy construction, sewer, water and tunnel construction, airport pavement and state highway construction, local street and miscellaneous paving construction and residential and agricultural construction. Different types of projects frequently have different prevailing wage rates for the same trade or occupation.

### **Are fringe benefits a part of the prevailing wage rate?**

Yes. The prevailing wage rate for every trade or occupation normally includes the hourly basic rate of pay, plus the hourly contributions for health insurance, vacation, pension, and other bona fide economic benefits.

**Must an employer provide a worker with fringe benefits?**

No. An employer is not required to provide any fringe benefits to a worker. An employer is only required to pay the total prevailing wage rate specified for each trade or occupation. Pay can be all in cash or any combination of cash and bona fide fringe benefits, paid by the employer.

**Are contributions made by an employer for workers compensation, unemployment insurance, social security, etc., considered fringe benefits?**

No. Any contribution that is required by law is not considered to be a bona fide fringe benefit.

**Are costs, incurred by an employer for uniforms, lodging, meals, or use of a company vehicle considered fringe benefits?**

No. Uniforms, lodging, meals, mileage, riding time and waiting time payments are specifically excluded as bona fide fringe benefits. Payments for such items are considered reimbursements or business expenses which an employer may choose to bear, but which are not purely for the worker's benefit. Other costs, such as the use of an employer's vehicle cannot accurately be calculated on an hourly basis and, therefore, are excluded.

**Are workers ever entitled to premium pay?**

Yes. If premium pay is required, it is specifically set forth on each determination. No premium pay is required for height pay, pay for work with particular products, shift differential, or supervisory pay.

**Must overtime be paid for work performed in excess of 8 hours in a day on a public works project?**

No. All covered workers must receive at least time and one-half for all covered work performed in excess of 10 hours in a day on Monday through Friday. Daily overtime is not required on projects subject to the federal Davis-Bacon Act. If a project is subject to both state and federal prevailing wage rate laws, daily overtime must be paid.

**Must overtime be paid for work performed in excess of 40 hours in a week on a public works project?**

Yes. All covered workers must receive at least time and one-half for all covered work performed in excess of 40 hours in any week.

**Are workers entitled to overtime for work performed on a Saturday, Sunday or Holiday on a public works project?**

Yes. All covered workers must receive at least time and one-half for all covered work performed on Saturday, Sunday and the following Holidays: New Years Day, Memorial Day, July 4<sup>th</sup>, Labor Day, Thanksgiving, and Christmas. Time and one-half must also be paid for all covered work performed on the day before a holiday if New Years Day, July 4<sup>th</sup> or Christmas falls on a Saturday or the day after a holiday, if New Year's Day, July 4 or Christmas falls on a Sunday.

**How is overtime calculated on a public works project?**

Overtime is calculated by multiplying the hourly basic rate of pay, listed on the prevailing wage rate determination for the trade performed by the worker by 1.5. If the worker's normal rate of pay is higher than the hourly basic rate of pay on the prevailing wage rate determination the worker must be paid time and one-half at their normal rate of pay.

In either event the amount specified for fringe benefits on the prevailing wage rate determination is required to be paid on all hours worked but not at time and one-half. The practice of “banking” overtime hours is prohibited.

**Once a state agency or local governmental unit obtains a prevailing wage rate determination for a project, can the same determination be used for another project?**

No. A prevailing wage rate determination issued for a specific project can only be used for that project. If another project is bid or negotiated, another prevailing wage rate determination must be requested.

If several projects are being bid or negotiated at the same time, a prevailing wage rate determination can be issued to cover all of the projects. The name or scope of each project appears on each prevailing wage rate determination.

**How soon must a prime contract be awarded or negotiated after a prevailing wage rate determination is issued?**

If a prevailing wage rate determination is issued on or before June 30<sup>th</sup> in a particular year, prime contracts must be awarded or negotiated by the end of that year. If a prevailing wage rate determination is issued after June 30<sup>th</sup> in a particular year, prime contracts must be awarded or negotiated within 180 days of the date of issuance.

If a prime contract is not awarded or negotiated prior to the expiration date, another prevailing wage rate determination must be requested. Prevailing wage rate determinations for state highway and bridge projects are issued to WisDOT once a year on the last working day in April. Each annual determination is good until the next annual determination is issued.

### **Are prevailing wage rate determinations ever updated?**

No. Prevailing wage rate determinations are never updated after being issued regardless of the duration of the project, change in local wage conditions or change in collective bargaining agreements. Prevailing wage rate determinations may contain a future increase if determinable. When the future date is reached, employers must pay their workers the future increase.

### **Can a prevailing wage rates ever be changed?**

Yes. A state agency or local governmental unit may request an administrative review regarding any wage rate issued pursuant to s. 66.0903 or 103.49, Wisconsin Statutes. Each request must be made in writing and received by mail with a postmark date within 30 days from the date the prevailing wage rate determination was issued. All requests must be made at least 10 days before the date that a construction contract(s) is awarded or negotiated. Each request must include wage rate information for the contested trade or occupation on at least 3 similar projects that were constructed within the city, village, or town where the proposed project is located and which were included in the department's most recent annual survey.

The department must also consider wage rate information from other similar projects, if available, from the most recent annual survey. The same calculation criteria used to initially determine prevailing wage rates are used in the administrative review process. If the Department of Transportation considers any wage rate issued pursuant to s. 103.50, Wisconsin Statutes to be incorrect, it may appeal to the Governor, whose decision shall be final.



**Does a copy of the prevailing wage rate determination have to be posted?**

Yes. A copy of the applicable prevailing wage rate determination must be posted, by the state agency or local governmental unit in at least one conspicuous and easily accessible place on the site of each project. If there is no common posting site on a project, a local governmental unit may post a copy of the applicable prevailing wage rate determination at the place normally used to post public notices.

**Must employers routinely file weekly payroll reports with a state agency or local governmental unit?**

No. Weekly payroll reports are not required by law, administrative rule, or regulation to be routinely filed with any state agency or local governmental unit. Every employer is required to keep good business records that accurately reflect each worker's name, work performed, and hours worked and wages earned. Employers are, however, required to file this information with a state agency or local governmental unit if specifically requested to do so. A prime contractor may; however, require a subcontractor to remit a weekly payroll report to the prime contractor as a condition for obtaining a subcontract.

**When must an employer file an affidavit of compliance?**

All prime contractors must file an affidavit of compliance with the state agency or local governmental unit upon completion of the project. All agents or subcontractors must file an affidavit of compliance with the prime contractor that awarded them their subcontract. No state agency, local governmental unit, or prime contractor may authorize a final payment until such an affidavit is filed in proper form and order. Affidavits are not required on state highway and bridge projects.

Forms ERD-5724 (Prime Contractor Affidavit) and ERD-10584 (Agent or Subcontractor Affidavit) are available at no charge from the department.

### **What determines the proper classification of a worker?**

The department determines prevailing wage rates for a wide variety of trades or occupations. All workers must be classified using only those trades or occupations recognized by the department and included in the applicable prevailing wage rate determination. The proper classification of a worker depends on the specific duties the worker performs and not a previously assigned occupational title. The department publishes a “Dictionary of Occupational Classifications and Work Descriptions” that describes, in detail, the primary purpose and typical duties performed by each classification that it recognizes. A copy of the dictionary is available at no charge from the department. It is also on DWD’s web site at the following address:

[http://www.dwd.state.wi.us/er/prevailing\\_wage\\_rate/dictionary\\_1.htm](http://www.dwd.state.wi.us/er/prevailing_wage_rate/dictionary_1.htm)

### **Can a worker be classified in more than one trade or occupation?**

Yes. This practice is known as “cross-classification”. If a worker performs the duties of more than one trade or occupation, the worker must be paid the prevailing wage rate determined for each trade or occupation. Cross-classification is to be used only when the duties performed by each classification are separate and distinct. If a worker performs only an incidental amount of work in another classification, then cross-classification is not allowed. The term “incidental” is defined as less than 15% of the work performed within a given week on the site of a public works project.

### **Do these laws cover all workers?**

No. With the exception of truck drivers, these laws cover only those workers employed on the site of a project. Administrative, clerical, supervisory and non-construction related workers are exempt from these laws. Foremen that do not perform manual labor on the site of a project are also exempt. Any worker employed in a shop that is processing or manufacturing materials or products for a project is also exempt from these laws unless the shop is dedicated exclusively, or nearly so, to serve a particular project. Sole proprietors, owners, partners, corporate members, or family members that perform covered work on the site of a project must receive the applicable prevailing wage rate for such work.

### **Can an apprentice work on a public works project?**

Yes. However, in order to be a bona fide apprentice, the worker must be formally registered in an apprenticeship program administered by the U.S. Department of Labor, a state agency recognized by the U.S. Department of Labor or under Wisconsin's apprenticeship law, Chapter 106, Wisconsin Statutes.

### **How much does an apprentice have to be paid on a public works project?**

An employer must calculate an apprentice's hourly basic rate of pay as follows. Multiply the journeypersons hourly basic rate of pay specified in the prevailing wage rate determination issued for a project, or multiply the hourly basic rate of pay specified in the apprentice's indenture, whichever is greater, by the appropriate percentage specified in the apprentice's indenture. In addition, all apprentices must receive fringe benefits at the same percentage used to calculate the hourly basic rate of pay. An apprentice can only receive this reduced rate of pay if they perform work within the scope of their indenture.

### **How many apprentices can an employer use on a public works project?**

There is no prevailing wage rate law, administrative rule, or regulation regarding the number of apprentices that an employer can use on a project subject to these laws. The appropriate Local Joint Apprenticeship Committee and the department's Bureau of Apprenticeship Standards prescribe the ratio of apprentices to journeypersons.

### **Can a non-union employer have an apprentice?**

Yes. Any employer is entitled to have an apprentice if the requirements set forth by this department's Bureau of Apprenticeship Standards are met. An employer cannot be denied an apprentice solely because it is non-union.

### **Can a sub-journeyperson work on a public works project?**

Yes, but only if such a classification has been found to prevail in the area where the project is located and the employer has requested written permission from this department to employ a sub-journeyperson before starting work on the project. Form ERD-10880 must be used by all contractors to request permission to employ a sub-journeyperson and is available at no charge from the department.

### **Are there limitations to the work that a sub-journeyperson can perform?**

Any limitations on the work a sub-journeyperson can perform will be specifically set forth in the correspondence from this department to the employer who requested permission to employ the sub-journeyperson. Other employment restrictions may be set forth in the correspondence.

One of the most common restrictions is that the employer must employ a bona fide apprentice in the same classification as the sub-journeyperson before a sub-journeyperson can be employed on a project.

**What must a worker be paid if a sub-journeyperson classification does not prevail in an area?**

The worker must receive the full journeypersons wage rate for the appropriate trade or occupation.

**How often must a worker be paid?**

All workers in the construction industry must be paid at least once every 31 days. Workers employed under a valid collective bargaining agreement may be paid less frequently depending on the language in such agreement. Workers who quit or are discharged must be paid on the next regularly scheduled payday.

**Can a worker voluntarily give up or accept less than the prevailing wage rate to which he/she is entitled?**

No. All workers must be paid the full wages to which they are entitled. A worker cannot “kickback” to their employer any wages earned.

**What is the penalty for taking or giving a kickback?**

Any employer who induces a worker to give up, waive or return any part of the wages that the worker is entitled to receive by threat not to employ, threat of dismissal, or any other means, is guilty of a class “E” felony. A class “E” felony is punishable by a fine of up to \$10,000, imprisonment for up to 2 years, or both. Any worker who knowingly gives up, waives or returns any wages earned, is guilty of a class “C” misdemeanor which is punishable by a fine of up to \$500, imprisonment for up to 30 days, or both.

**Can an employer reduce a worker's normal hourly basic rate of pay for work on a private project when working on a public works project?**

No. It is illegal for an employer to reduce the hourly basic rate of pay of a worker during a week that the worker is employed on both a private project and a public works project subject to the prevailing wage rate laws.

**What can an employer legally deduct from a worker's pay?**

An employer can legally deduct the amount necessary to satisfy:

- (1) federal and state taxes
- (2) social security taxes
- (3) advances on wages made without discount or interest
- (4) court ordered payments such as child support
- (5) contributions for health insurance if previously consented to by the worker,
- (6) savings bond purchases when voluntarily authorized by a worker
- (7) any deductions requested by a worker to enable them to repay loans to or purchase shares in a credit union
- (8) any deduction authorized by a worker to agencies such as the Red Cross or United Way
- (9) any deduction authorized by a worker to pay regular union initiation fees
- (10) membership dues but not fines or special assessments
- (11) any other deduction allowed pursuant to the federal Copeland Act.

All of the above deductions may be made without the approval of the Secretary of the U.S. Department of Labor. Other deductions may require the approval of such Secretary.

### **Is a worker entitled to the prevailing wage rate for travel time?**

No. Workers are not entitled to the prevailing wage rate for time spent traveling from their home to a job or the employer's place of business or the return trip home. Under certain circumstances travel pay may be required for time spent traveling from an employer's place of business to a job. Time spent traveling during the workday on the employer's business may also require the payment of travel time. A worker is normally only entitled to an "agreed upon" wage rate for travel time. An "agreed upon" wage rate may not be less than the minimum wage. Prevailing wage rates are normally only required to be paid for work performed on the site of a project.

### **Are truck drivers entitled to receive the prevailing wage rate?**

It depends. Truck driving involves the greatest number of variables that must be considered when determining coverage under these laws. Truck drivers that deliver processed or manufactured materials or products to a public works project are not covered by these laws if they are employed by a commercial establishment which has a fixed place of business from which it regularly supplies such materials or products.

Truck drivers employed by commercial establishments that deliver mineral aggregate, such as sand, gravel and stone, to a public works project are covered by these laws if the material is deposited substantially in place when it is delivered to the project and the material is not further transported by truck. These laws do not cover the delivery of mineral aggregate by a commercial establishment to a public works project if it is stockpiled for future use. A stockpile is defined as a storage pile that is replenished and is typically used as a reserve for use as needed. These laws, regardless, cover truck drivers that haul mineral aggregate exclusively on the site of a public works project if the aggregate is stockpiled or deposited substantially in place.

Truck drivers that deliver ready-mixed concrete or bituminous concrete to a public works project are not covered by these laws unless such material is produced on the site of the project, or from a portable batch plant which is dedicated exclusively, or nearly so, to the project. Time spent hauling excavated material or spoil from, and returning to, the site of a public works project is covered by these laws. The term “truck driver” includes the owner-operator of a truck. A worker who drives a pick-up truck is not normally considered to be a “truck driver.”

**If a project has both a federal and state prevailing wage rate determination, what wage rate must be paid if different wage rates have been determined for the same trade or occupation?**

The higher of the two wage rates must generally be paid. However, wage rates determined pursuant to Wisconsin’s prevailing wage rate laws on some housing projects are not enforceable if they are higher than the wage rates determined by the federal government, pursuant to the U.S. Housing Act of 1937.

**Does any state agency or local governmental unit investigate the wages paid on a project?**

Yes. The Department of Workforce Development conducts investigations based on written complaints and inquiries. In addition, it conducts prevailing wage site visits and periodically requests payroll records of contractors and subcontractors employed on prevailing wage projects. The Department of Transportation conducts all investigations on state highway and bridge projects. Some local governmental units conduct investigations on projects within their jurisdiction.



### **How long does it take the department to complete an investigation?**

Each investigation is different. The department's goal is to complete each investigation in about 120 days. Complex cases, however, can take much longer. State law gives the department up to two (2) years to complete an investigation.

### **How does a person file a complaint?**

Any person can file a complaint. All complainants must complete form ERD-9850 and send it to the department. The more facts that are provided about an alleged violation, the better the chances are to recover any unpaid wages. Be specific. Indicate the name of the employer, the project(s) worked on, the exact nature and dates the work was performed, the wage rate received and the names of other workers that were employed on the project. Copies of check stubs are frequently very helpful. Form ERD-9850 can be obtained from the department at no charge.

### **When should a complaint be filed?**

As soon as one suspects a violation has occurred. Unpaid wages cannot be collected for work performed more than two (2) years prior to the filing of a complaint.

### **Can a complainant's name be kept confidential?**

No. The department does not accept anonymous complaints.

### **Can an employer legally terminate a worker for filing a complaint?**

No. Employers are prohibited from retaliating against workers that file complaints, attempt to enforce a right permitted by law, testify in

an investigation or assists in an investigation regarding all prevailing wage rate laws.

Employers are also prohibited from retaliating against a worker because the employer believes the worker has done or may do any of the actions indicated above. Contact the division's Civil Rights Bureau intake staff person at (608) 266-6860 if you have any further questions regarding retaliation.

**Can a worker be compensated if their employer retaliates against them for filing a complaint?**

Yes. Following an administrative hearing compensation in lieu of reinstatement may be awarded if requested by any party and must be awarded if requested by all parties. Such compensation may not be less than 500 times or more than 1,000 times the hourly wage of the person discriminated against when such discrimination occurred.

**If a complaint is filed and the employer is found to be in compliance with the law, how much does a complainant have to pay?**

If a worker filed the complaint on their own behalf, they would be required to pay the department the actual cost it incurred in conducting the investigation. If the complaint were filed by anyone else, they would be required to pay the department a minimum of \$250, or the actual cost of the investigation, whichever is greater.

**What happens if an employer underpays a worker?**

Following an investigation the department will order the employer to reimburse the worker the full amount of any unpaid wages owed. If the employer refuses to pay, the investigation is normally referred to either the District Attorney or Attorney General for collection and prosecution.

**Are employers fined and penalized by the department if they violate these laws?**

No. All prevailing wage rate laws contain one or more penalties; however, the department does not have the authority to impose any penalty. All penalties must be imposed by a court of law. The department's only responsibility is to conduct investigations and attempt to recover any unpaid wages.

Any violation on a prevailing wage rate project can result in a fine of up to \$200 a day, imprisonment for not more than 6 months, or both. Violations can also result in a forfeiture of \$10 to \$100 a day. If a worker files an action on their own behalf in a court of competent jurisdiction and is successful in such action, they are entitled to an amount equal to their unpaid wages as liquidated damages, plus reasonable attorney fees and costs.

**What additional actions can the department take if an employer violates these laws?**

Under certain circumstances the department can recover up to an additional 50% of any unpaid wages found due. Normally, this additional compensation can only be recovered if an employer failed to complete a self-audit as instructed.

**Can the department debar an employer from working on a public works project?**

Yes. If it is determined that an employer has;

- (1) failed to pay a worker the proper prevailing wage rate
- (2) failed to pay a worker at least one and one-half times the proper hourly basic rate of pay for all hours worked in excess of 10 hours per day or 40 hours per week

- (3) induced a worker to give up, waive or return any part of the wages earned on a public works project
- (4) falsified, deliberately destroyed or failed to keep the required payroll records on a public works project.

Debarment can be imposed against an employer, including its responsible officers, directors, members, shareholders or partners provided such individual is vested with the management of the affairs of the individual or legal entity. An employer cannot be debarred for any violation that occurred before July 1, 1987.

### **For what length of time can an employer be debarred?**

An employer can be debarred for up to three (3) years. The existence of a cause for debarment does not always require that an employer be debarred. The seriousness of the offense, past compliance history, attitude, and other mitigating factors must be considered by the department when it determines the length of time an employer is to be debarred.

### **What should all state agencies and local governmental units remember to do when soliciting bids or negotiating contracts on a project covered by a prevailing wage rate determination?**

- (1) Include a statement in the notice that is issued for the purpose of securing bids to the effect that the project will be covered by a prevailing wage rate determination.
- (2) File an application for the prevailing wage rate determination with the department 50 to 60 days prior to soliciting bids or negotiating a contract.
- (3) Physically incorporate a copy of the prevailing wage rate determination in the specifications and each contract.

(4) Insert a clause in every prime contract which states that the project is subject to the provisions of either s. 66.0903 or 103.49, Wisconsin Statutes (whichever is applicable) and Chapter DWD 290 of the Wisconsin Administrative Code.

(5) Obtain a “Disclosure of Ownership” form, if necessary, from each contractor on the date bids are submitted or negotiations are completed.

(6) Review the department’s current “Consolidated List of Debarred Contractors” to ensure that a contract will not be awarded to or negotiated with a contractor who is ineligible to receive a contract or participate as a subcontractor.

(7) Post a copy of the applicable prevailing wage rate determination.

(8) Obtain an “Affidavit of Compliance” from each prime contractor prior to releasing the prime contractor’s final payment.

**What should all employers remember to do when working on a project covered by a prevailing wage rate determination?**

(1) Review the prevailing wage determination before submitting a bid or negotiating a contract.

(2) Incorporate a copy of the prevailing wage rate determination into all subcontracts.

(3) Keep good business records for each worker employed on the project.

(4) Request the department to issue a wage rate for any sub-journeyperson that is anticipated on the project.

(5) Contact the department for information regarding the proper classification of workers, how to properly pay straight time, overtime and fringe benefits, etc.

(6) Obtain an “Affidavit of Compliance” from each subcontractor prior to releasing the subcontractor’s final payment.

### **What are the Prevailing Wage Survey Procedures?**

The department is required to perform an annual survey to establish the prevailing wage rate for each trade or occupation on each project type in each of Wisconsin’s 72 counties. Annual survey booklets are mailed to construction contractors in late May each year.

The survey form requests employers to provide the name of each project, project type, public or private work, location (city, village, town and county), numerical labor classification of the trade reported, the hourly base wage for journey workers, the hourly fringe benefit rate for journey workers, union affiliation, and finally the total hours worked in the survey base period.

The base period for the annual survey is June 1 of the prior year through May 31 of the current year. All surveys must either be received by the department or postmarked no later than July 31 of the current year, and be properly completed, to be accepted for compilation.

Following computer entry of all properly completed and timely returned annual prevailing wage survey forms the department calculates the projected prevailing wage rates to become effective January 1 of the following year. These preliminary hourly rates are called the “initials”. The initials are published on the department’s web site.

The department then conducts a 30 day review / correction period where information or data used to calculate the hourly rates can be corrected. Since the beginning of the 30 day review / correction period is dependent upon completion of the entry of all correctly completed, timely returned survey data the exact dates of the review / correction period vary from year to year. The review / correction period has been the month of October for the past several years. At the conclusion of the review /correction period the department then calculates the “finals” which go into effect January 1 of the following year.